IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 2ND MARCH 2007 / 11TH PHALGUNA 1928

WP(C).No. 26442 of 2006(W)

PETITIONER:

SHAMINI M.K., W/O. SHIBU, AGED 30 YRS,
SHAMINI MANZIL, ATHIKATTUKULANGARA, NOORANAD.

BY ADV. SRI.RASHEED C.NOORANAD
SRI.G.GOPAKUMAR (CHERTHALA)

RESPONDENTS:
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1. STATE OF KERALA, REP. BY
CHIEF SECRETARY, THIRUVANANTHAPURAM.

2. SECRETARY TO EDUCATION,
SECRETARIAT, THIRUVANANTHAPURAM.

3. DEPUTY DIRECTOR,
D.D. OFFICE OF EDUCATION, ALAPPUZHA.

4. DISTRICT OFFICER,
KERALA PUBLIC SERVICE COMMISSION,
ALAPPUZHA.

5. CHAIRMAN,
PUBLIC SERVICE COMMISSION, PATTOM,
THIRUVANANTHAPURAM.

6. NAILA HAMEED,
MEENATHERYL, K.S.PURAM, KARUNAGAPPALLY.

R1 TO R3 BY GOVERNMENT PLEADER (SMT. M. R. SREELATHA)

R4 & R5 BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. M. JOSEPH, J.

W.P.C. NO. 26442 OF 2006 W

Dated this the 2nd March, 2007

JUDGMENT

Case of the petitioner, in brief, is as follows:

Petitioner is a rank holder in the rank list for the post ofHSA (English) in Alappuzha District. She is the sixth candidate in the supplementary list for Muslims. It is stated that the fourth respondent advised upto the fifth candidate. But, the third candidate, namely the sixth respondent, though advised from the supplementary list for Muslim, relinquished the appointment as she is already employed as a teacher in the Vaduthala Juma Ath Higher Secondary School. Ext.P2 is produced as the relinquishment letter of sixth respondent. Since the sixth respondent relinquished her appointment, petitioner is the next eligible Muslim candidate, it is stated. Petitioner made Exts.P3 and P4 representations. The prayer in the Writ Petition is to direct the third respondent to report the vacancy of the post relinquished by sixth respondent who was advised under

Muslim reservation from Ext.P1 rank list and the fourth respondent to issue consequent advice memo to the petitioner.

2. A Counter Affidavit filed on behalf of respondents 4 and 5. An Additional Counter Affidavit also has been filed wherein it is stated that the rank list exhausted on 8.9.2006. It is also stated that Ext.P2 is not a letter of relinquishment submitted by the sixth respondent and it is a submission made on 31.8.2006 by sixth respondent to the Deputy Director of Education, Alappuzha stating that she did not wish to join duty as per the appointment order dated 30.6.2006 issued by the Deputy Director. It is also stated that it is clear from the said Exhibit that advice was made on 15.6.2006 and no relinquishment was received in the Office of the Public Service Commission prior to the date of advice and thereafter. It is further stated that relinquishment is to be proper in all respects and to be submitted to the Commission for consideration prior to the receipt of the vacancy and the Commission would act upon it. It is stated that the NJD vacancy of the non-joining of the

sixth respondent has not been reported yet and as the rank list stands cancelled, nothing survives in the Writ Petition. Learned counsel for petitioner submits that in fact the NJD vacancy was reported. Learned Government Pleader was asked to ascertain the date on which the NJD vacancy was reported. She on instructions submits that the NJD vacancy was reported only on 28.11.2006.

3. In view of the fact that the vacancy was received only after the expiry of the main list and the undisputed principle of law that supplementary list cannot be made use of when the main list has expired, it is submitted that the petitioner cannot lay a claim. Accordingly, the Writ Petition fails and it is dismissed.

K. M. JOSEPH, JUDGE

kbk.